

Maine Citizen Trade Policy Commission



Senator Margaret Rotundo, Co-Chair

Representative John Patrick, Co-Chair

MEMORANDUM

July 5, 2005

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Susan M. Collins
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510-1903

The Honorable Thomas H. Allen
United States House of Representatives
1717 Longworth House Office Building
Washington, D.C. 20515

The Honorable Michael H. Michaud
United States House of Representatives
437 Cannon House Office Building
Washington, D.C. 20515

Dear Senator Snowe, Senator Collins, Congressman Allen and Congressman Michaud:

The Maine Citizen Trade Policy Commission writes to seek your assistance in obtaining information from the United States Trade Representative ("USTR") regarding the federal government's intentions to commit Maine state laws to comply with the World Trade Organization's General Agreement on Trade in Services (GATS).

As you know, while the United States Constitution places the regulation of trade with foreign countries within the prerogative of the federal government, primary responsibility for protecting public health, welfare and safety is left to the states. It has become increasingly clear to us that the GATS has the potential to undercut traditional areas of state authority. Thus, we view it as crucial that the federal government seek Maine's prior informed consent before agreeing to proposals in negotiations to expand the GATS that would bind state and local governments to conform their laws and practices to the terms of the pact.

Unfortunately, the USTR's efforts to date to seek the input and consent of states have been less than ideal. On May 3, 2005, the USTR issued a memo to the State Points of Contact (SPOCs) providing summaries of additional service sectors that were under consideration for inclusion in the updated United States GATS submission, and giving states the opportunity to

comment on whether the proposed submission accurately reflected existing state laws or regulations in the identified service sectors. The USTR gave the states until May 26, 2005, to respond to the memo.

On May 27, 2005, the Commission responded by faxed letter asking USTR to carve out all Maine State and local government actions from the new GATS offer until such time as there had been full opportunity to review and analyze the language of the proposed commitments. A copy of the Commission's letter is attached. We have not received a response to this letter. The U.S. offer was submitted to the WTO on May 31, 2005, and it appears that Maine was not carved out of the GATS offer.

The Commission's staff member was told, informally, by a staff person at USTR that Maine's request to be carved out of the current GATS offer was not honored because it arrived at USTR one day beyond the May 26, 2005, deadline, and because it did not come from the Governor's office. If this report is correct, it is troubling for two reasons. First, timely response to the USTR's request was made difficult by the shortness of time as well as the dearth of information provided to the states. In our responding letter, we pointed out that the tight deadline made it difficult to respond, and that we needed more information to analyze the request. Moreover, May 26 was an arbitrary deadline. The real deadline, in terms of the process of offers, was May 31. The U.S. had not yet made its GATS offer when it received Maine's request and could have carved out Maine measures from the offer had they been willing to do so.

Second, the USTR's alleged refusal to honor the commitment because it did not come from the Governor's office relies on a formality that is not based in law or policy. In practice, the USTR communicates with the State of Maine through the Single Point of Contact system. Maine's Single Point of Contact, Richard Coyle, as director of the Maine International Trade Center, is a member of our Commission. At a minimum, upon receiving the Commission's letter, the USTR should have contacted the Commission, Mr. Coyle, or the Governor's office, to discuss Maine's response to the offer. The USTR's failure to respond or inform the State of Maine regarding the status of its services commitments leaves us in an untenable position of uncertainty.

All of this points out problems that are inherent in the current system of consultation with the states on international trade issues. The USTR has demonstrated a failure to communicate openly and in a timely fashion with an appropriate range of contacts in the states. There are no formal guidelines or protocols for engaging in discussions with the USTR. The USTR's failure to institute a policy for consistent, uniform, and substantive communication with the states has resulted in confusion and lack of understanding on both sides. In an effort to resolve issues relating to this most recent failure of communication, and in a continuing effort to strengthen and clarify the system for communicating with USTR in future, we would appreciate your assistance in receiving answers to the following questions:

- On what basis did USTR refuse to honor the Commission's request that Maine be carved out of the May 31, 2005 GATS offer?

- What will be the USTR's protocol for communicating with States for the remainder of the GATS negotiations, including both market access negotiations and negotiation of new GATS rules such as disciplines on domestic regulation?
- How will USTR address the common complaint that states are not given enough time or information to evaluate requests for comment? Will USTR honor Maine, and other states', requests that they be given more time and information necessary to evaluate the requests for services commitments as they arise?
- The May 31, 2005 offer states, "The United States reserves the right to withdraw, modify, or reduce this offer, in whole or in part, at any time prior to the conclusion of the negotiations." As the U.S. negotiating position is still malleable, what will the USTR do to work with Maine to withdraw service sectors that have already been offered or committed in previous rounds of negotiations if we have major concerns about potential future impacts that such commitments may have on the enforcement of state laws and regulations?

Thank you for your attention and anticipated assistance in obtaining answers to our questions from the USTR. We admire and rely on your leadership in reviewing trade agreements and pressing for fair treatment for the people of Maine. We appreciate your willingness to listen to our concerns regarding the negotiation of the GATS.

Sincerely,

Senator Margaret Rotundo
Co-Chair

Sincerely,

Representative John Patrick
Co-Chair